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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Third-Country Blends Containing Chinese Components

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to allegations of circumvention from the American HFC Coalition (the petitioners), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether certain hydrofluorocarbon (HFC) blends, containing HFC components from India and the People's Republic of China (China), that are blended in India prior to importation into the United States, are circumventing the antidumping duty (AD) order on HFC blends from China.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4987 and (202) 482-5518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2017, Gujarat Fluorochemicals Ltd. (GFL) filed a scope ruling request asking Commerce to confirm that its blend of R-410A, containing a 50-50 blend of the Chinese manufactured HFC component, R-32, and the Indian-produced HFC component, R-125, blended in India, is excluded from the *Order*.¹ On July 3, 2017, the petitioners filed a submission, in opposition to GFL's request, arguing that HFC blends, containing Chinese HFC components, are included in the scope of the *Order* regardless of whether the blending occurs in India.² On October 13, 2017, Commerce initiated a formal scope inquiry.³

On August 6, 2018, the petitioners alleged that GFL was circumventing the *Order* by: (1) importing HFC component, R-32, from China into India; (2) performing a minor blending process in India with Indian-produced HFC component, R-125; and (3) exporting the HFC blend, R-410A, to the United States, as Indian origin.⁴ Therefore, the petitioners requested that Commerce conduct an anti-circumvention analysis of the scope ruling request filed by GFL, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h) to determine whether GFL's exports of R-410A are circumventing the *Order*.⁵

On August 27, 2018, GFL filed a letter opposing the petitioners' request that Commerce apply section 781(b) of the Act to GFL's scope ruling request.⁶ In its submission, GFL argued, among other things, that its R-410A HFC blend is already excluded from the *Order* because the

¹ See GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request of Gujarat Fluorochemicals Ltd. for a Scope Ruling Confirming the Exclusion of Hydrofluorocarbon Blends Which are Blended in India from the AD Order," dated June 12, 2017 (GFL Scope Ruling Request); *see also* *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Opposition of the American HFC Coalition to the Request by Gujarat Fluorochemicals Ltd. for a Scope Ruling," dated July 3, 2017.

³ See Memorandum, "Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Scope Inquiry on Gujarat Fluorochemicals Ltd.'s R-410A Blend," dated October 13, 2017.

⁴ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request to Apply Section 781(b) of the Act," dated August 6, 2018 (Initiation Request).

⁵ *Id.* at 4-5.

⁶ See GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Objection to Application of Section 781 to GFL's Scope Ruling," dated August 27, 2018.

International Trade Commission (ITC) reached a negative determination with respect to Chinese HFC components (*i.e.*, R-32), blended in third countries.⁷

Scope of the Order

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.⁸

Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of the *Order*.

⁷ See *Hydrofluorocarbon Blends and Components from China, Inv. 731-TA-1279 (Final)*, USITC Pub. 4629, dated August 2016 (*Final ITC Determination*).

⁸ R-404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva® 404A. R-407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea® 407A, and Suva® 407A. R-407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R-410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ-20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R-507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea® 507, Genetron® AZ-50, and Suva® 507. R-32 is sold under various trade names, including Solkane® 32, Forane® 32, and Klea® 32. R-125 is sold under various trade names, including Solkane® 125, Klea® 125, Genetron® 125, and Forane® 125. R-143a is sold under various trade names, including Solkane® 143a, Genetron® 143a, and Forane® 125.

Excluded from the *Order* are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from the *Order* are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-422D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.⁹

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers HFC blend R-410A, comprised of Chinese manufactured HFC components and Indian manufactured HFC components, blended in India to produce R-410A, prior to importation into the United States. This inquiry will also examine HFC blends R-404A, R-407A, R-407C, and R-507A produced in India using one or more HFC components of Chinese origin, as appropriate.

Initiation of Anti-Circumvention Proceeding

Section 781(b) of the Act and 19 CFR 351.225(h) provide that Commerce may find circumvention of an AD order when merchandise that would be subject to the AD order is completed or assembled in another foreign country before being exported to the United States. In conducting anti-circumvention inquiries under section 781(b)(1) of the Act, Commerce relies

⁹ See *Order*.

upon the following criteria: (A) merchandise imported into the United States is of the same class or kind as merchandise produced in a foreign country that is the subject of an AD order; (B) before importation to the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the foreign country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) Commerce determines that action is appropriate to prevent evasion of the AD order.

A. Merchandise of the Same Class or Kind

The petitioners maintain that, pursuant to section 781(b)(1)(A) of the Act, the HFC blend R-410A sold in the United States is of the same class or kind as merchandise subject to the *Order*.¹⁰

B. Completion of Merchandise in Another Foreign Country

The petitioners contend that section 781(b)(1)(B)(ii) of the Act, as described above, covers the manufacture of R-410A in India, because R-32, a component of R-410A which makes up 50 percent of the blend, is manufactured in China, the country to which the *Order* applies.¹¹

C. Minor or Insignificant Process

Under sections 781(b)(1)(C) and 781(b)(2) of the Act, Commerce will take into account five factors to determine whether the process of assembly or completion of merchandise in the United States is minor or insignificant. Specifically, Commerce will consider: (A) the level of

¹⁰ See Initiation Request at 5-6; see also GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments of Gujarat Fluorochemicals Ltd. on Scope Inquiry of GFL's Indian Origin R-410A," dated November 2, 2017.

¹¹ See Initiation Request at 6-7.

investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

1) Level of investment in the foreign country

The petitioners point to a blender's testimony at an ITC staff conference that blending requires less than a \$1 million investment, and state that GFL did not submit any evidence regarding its investments in India on holding tanks, pipes, valves, and other equipment used to blend R-32 and R-125.¹² Petitioners further argue that, because GFL manufactures other chemicals, it has vessels and equipment needed to store, transfer, and blend HFC components, and, therefore, it is likely that GFL's blending operations require no additional investment.¹³

2) Level of research and development in the foreign country

The petitioners state that no research and development is required for blending operations and note that GFL did not submit any evidence regarding research and development.¹⁴

3) Nature of the production process in the foreign country

The petitioners state that the production process only requires a holding tank for the finished R-410A blend, some pipes, and valves and is a very simple mixing operation with no chemical reaction and no temperature change involved.¹⁵ Petitioners state that the blending process simply combines the components together according to the recipe, and then packages the

¹² *Id.* at 8 (citing the petitioners' submission "Response to GFL's Initial Scope Comments," dated November 13, 2017 (Petitioners' November 13, 2017 Submission) at Exhibit 5 (ITC Staff Conference testimony)).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 7 (citing Petitioners' November 13, 2017 Submission at Exhibit 2 (ITC Hearing Transcript) and Exhibit 3 (Dongyue Section D Response and TTI Section D Response)).

finished blend into containers.¹⁶ To produce R-410A to AHRI specifications, the blend must be a “nominal” composition of 50 percent R-32 and 50 percent R-125.¹⁷ Further, the petitioners state that the blender may also use equipment to test the finished blend to ensure it meets the requisite specification, and additionally may use equipment to package the finished blends.¹⁸

4) Extent of production facilities in the foreign country

The petitioners provide evidence showing that blending is a simple operation that requires minimal personnel and very basic production facilities.¹⁹

5) Value of processing performed in the foreign country

The petitioners point to proprietary information from GFL’s scope ruling request and subsequent submission showing that the blending process represents a very small cost relative to the value of the components,²⁰ and that Commerce found, in the original investigation, that third-country blending would not substantially transform or change the country of origin of the single components.²¹

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise

The petitioners argue that HFC component R-32 is sourced from China, and R-32 constitutes nominally 50 percent of the total materials of R-410A. Additionally, the petitioners point to proprietary information from GFL’s scope ruling request which the petitioners argue

¹⁶ *Id.* at 7 (citing Dongyue Section D Response and TTI Section D Response).

¹⁷ *Id.* at 7 (citing Petitioners’ November 13, 2017 Submission at Exhibit 4 (Petition)).

¹⁸ *Id.* at 7 (citing *Final ITC Determination* at I-15).

¹⁹ *Id.* at 7-8 (citing ITC Hearing Transcript).

²⁰ *Id.* at 8 (citing GFL’s Scope Request at Attachment 4; GFL’s Supplemental Response at Exhibit 4).

²¹ *Id.* at 8-9; see also *Hydrofluorocarbon Blends and Components Thereof from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016), and accompanying Issues and Decision Memorandum at Comment 4.

demonstrates that the merchandise produced in China is a significant portion of the value of the merchandise exported to the United States.²²

E. Factors to Consider in Determining Whether Action Is Necessary

Section 781(b)(1)(E) of the Act states that Commerce will determine whether action is appropriate to prevent evasion of an AD order, and section 781(b)(3) of the Act identifies additional factors that Commerce shall consider in determining whether to include parts or components in an AD order as part of an anti-circumvention inquiry, including: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in section 781(b)(1)(B) is affiliated with the person who uses the merchandise described in (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise described in (1)(B) have increased after the initiation of the investigation which resulted in the issuance of an AD order.

While there are no known affiliations between Chinese manufacturers of R-32 and GFL, the petitioners argue there has been a change in the pattern of trade to avoid AD duties, and an increase in exports of HFC components from China to India, since the imposition of the *Order* in 2016.²³ Specifically, based on numerous sources, the petitioners contend that the monthly average export volume of HFC components from China to India increased by 90.6 percent between 2015 and 2018,²⁴ and U.S. imports of HFC blends from India have increased from zero kilograms in 2016 to over one million kilograms in the first five months in 2018.²⁵ As such, the

²² See Initiation Request at 9-10 (citing GFL's Scope Request at Attachment 4).

²³ *Id.* at 12-14.

²⁴ *Id.* at 12 and Exhibit 2 (Global Trade Atlas statistics).

²⁵ *Id.* at 13 and Exhibit 3 (Census statistics).

petitioners argue that the only reason to export R-32 to India to be blended, and to not complete the blending in the country of origin, is to evade application of AD duties upon importation.

Conclusion

Based on the information provided by the petitioners, we determine that there is sufficient information to warrant an initiation of an anti-circumvention inquiry, pursuant to section 781(b) of the Act and 19 CFR 351.225(h). Commerce will determine whether the merchandise subject to the inquiry (as described in the “Merchandise Subject to the Anti-Circumvention Inquiry” section above) is circumventing the *Order* such that it should be included with the scope of the *Order*. Additionally, as part of this anti-circumvention inquiry, we will address the scope inquiry filed by GFL under 19 CFR 351.225(c),²⁶ and our final findings in this anti-circumvention inquiry will include a final finding with regard to GFL’s scope inquiry.

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

Following consultation with interested parties, Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. Before issuance of any affirmative determination, Commerce intends to notify the ITC of any proposed inclusion of the inquiry merchandise under the *Order* in accordance with section 781(e)(1)(B) of the Act. Pursuant to section 781(f) of the Act, Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

²⁶ See GFL Scope Ruling Request.

Notification to Interested Parties

This notice is published in accordance with sections 781(b) of the Act and 19 CFR 351.225(h).

Dated: June 12, 2019.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

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